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### Knoedler fakes trial could be a game-changer for the art market

It should provide guidance on who is responsible when forgeries are sold

by [LAURA GILBERT](#) | 25 January 2016



The collectors Domenico and Eleanore De Sole. Photo: [www.alamy.com](http://www.alamy.com) RD0T80

When the Knoedler gallery in New York closed in 2011 amid accusations that it had sold forged Abstract Expressionist paintings, the art world was shocked. But what are the implications of the unfolding scandal for other

galleries and collectors? We may get some answers in the first trial arising from the case, which is scheduled to begin in New York on 25 January.

The collectors Domenico and Eleanore De Sole will try to convince the jury that Knoedler, its former director Ann Freedman and the gallery's corporate owner, 8-31 Holdings, should pay \$25m for knowingly selling them a fake Mark Rothko in 2004. The couple paid Knoedler \$8.4m for the work and are seeking triple that amount in damages under the federal Racketeer Influenced and Corrupt Organizations Act—the same legislation that is often used to fight organised crime.

A jury verdict will signal what constitutes reasonable behaviour, which in turn could influence others. For example, if a jury decides that a doctor must pay millions in damages because he left a surgical instrument inside a patient, other doctors are going to make sure they don't do the same. Similarly, the jury in the Knoedler trial should signal what is expected from the different parties in art transactions: which red flags should alert galleries to fraud and what investigations should they undertake to safeguard against it? Are sophisticated collectors obliged to research authenticity themselves, or can they do what they've always done and trust a reputable gallery to do its homework?



Ann Freedman (right), formerly of the Knoedler gallery, is among those being sued by the collectors Domenico and Eleanore De Sole. Photo: Jonathon Ziegler © Patrick McMullan/PatrickMcMullan.com

If the jury finds that Knoedler turned a blind eye to the fraud, galleries could get valuable guidance on what they should do to avoid liability. If the jury finds the De Soles had due diligence obligations, collectors would be warned that they, not galleries, bear the risk of fraud.

Knoedler and Freedman say that they thought the works were genuine and that they were duped by the art dealer Glafira Rosales, who supplied them. In 2013, Rosales pleaded guilty to federal tax evasion and money-laundering and admitted that 40 paintings she had taken to Knoedler over 14 years were forgeries. Knoedler sold more than 30 of these, for a total of around \$60m.

The jury will first have to decide whether there were so many red flags that Knoedler must have known that the paintings were not authentic. These include the fact that the paintings were undocumented and their provenance changed. The plaintiffs will also argue that Rosales sold these paintings to Knoedler for well below the market value of authentic works by the artists in question (although the defendants are likely to dispute this) and that Knoedler was informed of doubts over the works' authenticity yet continued to sell them.

## Acting in good faith

The defendants will argue the good faith of Freedman and the gallery. They will recount how Knoedler hired a former curator at the National Gallery of Art in Washington, DC, to research provenance and how Freedman showed the paintings to experts who, she says, viewed them favourably. For example, the National Gallery wrote to Freedman to say that if it published a supplementary Rothko catalogue raisonné, it intended to include the painting sold to the De Soles. They will also have experts testify that they did everything expected of a gallery. The De Soles argue that they should have done more. Had they investigated Rosales, for example, they would have learned that her boyfriend had been accused of art fraud in Spain.

If the jury is convinced by the De Soles, it will tackle the next question: were they justified in relying on Freedman? The De Soles say that they are entitled to trust a gallery like Knoedler to do its research. The defendants say that the De Soles are sophisticated collectors—Domenico De Sole later became the chairman of Sotheby's—so they were obliged to investigate authenticity themselves.

In his decision in October to deny the defendants' motion for summary judgment, federal judge Paul Gardephe stated that the De Soles were not required to make "extraordinary" efforts to discover the truth. And investigating authenticity can be very difficult. Experts often decline to express their opinions for fear of legal costs if they are sued by interested parties—the Andy Warhol Foundation spent \$7m on one lawsuit, then closed its authentication board. (Legislation to protect authenticators has been proposed in New York, but it has not yet been enacted, and it has been so diluted that it might not bring experts back from the sidelines.)

Citing law governing investments, Judge Gardephe also said that the more sophisticated the individual, the greater the investigation he or she must

make. If the jury decides that the De Soles should have done more, it will send a strong message: collectors should treat art purchases like any other investment. That could be a game-changer.

The reliance on trust is so pervasive that even the veteran dealer Richard Feigen relied on Knoedler's reputation when he intermediated the sale of a Knoedler fake. "That was a mistake," he said. (Feigen later refunded the buyer.) Others may not have Feigen's access to experts and information, but they will hear the warning: caveat emptor.

## How the events unfolded

### 1994-2008

Long Island-based art dealer Glafira Rosales delivers 40 Abstract Expressionist paintings to the Knoedler gallery, telling then-director Ann Freedman that a few were owned by a Spanish collector and the remainder by a "Mr X", who had inherited them from his parents. The works will all turn out to be fakes.

### 1994

Knoedler sells its first Rosales painting, a "Richard Diebenkorn".

### 1994-95

Relatives of Diebenkorn tell Freedman that they doubt the authenticity of the Knoedler Diebenkorns that came from Rosales. Knoedler continues to sell the paintings.

### By 2000

The artist and art patron Alfonso Ossorio is included in the works' provenance as someone who helped Mr X's parents to acquire them.

### 2001

The New York-based collector Jack Levy buys a "Jackson Pollock" on the condition that the International Foundation for Art Research (IFAR) finds that it has not been misattributed.

### 2003

The National Gallery of Art in Washington, DC, writes to Freedman, saying that if it publishes a supplementary Mark Rothko catalogue raisonné, it intends to include the painting from Rosales that Knoedler later sold to Domenico and Eleanore De Sole.

IFAR rejects the Ossorio provenance and says that it "cannot currently support" adding the Levy "Pollock" to the artist's body of work. Knoedler

refunds Levy's money but continues to market "Pollocks" brought to it by Rosales.

#### **2003-04**

The New York-based art world figure David Herbert is substituted for Ossorio in the provenance.

#### **2004**

Knoedler sells the De Soles a "Rothko" for \$8.4m, more than eight times the amount it paid Rosales for the work.

#### **2005**

When asked by Freedman, Rosales refuses to sign a statement that the paintings are authentic.

#### **2007-08**

The Dedalus Foundation, which maintains the Robert Motherwell catalogue raisonné, tells Freedman that it believes the Rosales "Motherwells" are fakes.

#### **2008**

Knoedler hires the private company Orion Analytical to conduct forensic testing on two purported Motherwells from Rosales. Orion finds that they contain pigments that were not available until ten years after the paintings were supposedly created.

#### **2009**

Knoedler receives an FBI subpoena related to Rosales. Freedman is sent on leave and resigns.

#### **2011**

Knoedler closes. The London-based hedge-funder Pierre Lagrange files the first lawsuit, alleging that Knoedler and Freedman sold him a fake Pollock. Ultimately, ten lawsuits are filed. Five settle, including Lagrange's.

#### **2012**

The De Soles sue.

#### **2013**

Rosales pleads guilty to federal tax evasion and money-laundering and

admits that the paintings are forgeries. It is later disclosed that they were painted in Queens by the Chinese artist Pei Shen Qian.

## **2014**

Rosales's boyfriend, Jose Carlos Bergantinos Diaz, his brother, Jesus Angel Bergantinos Diaz, and Pei Shen Qian are indicted in connection with the forgeries. The brothers are arrested in Spain and are currently awaiting extradition to the US. The artist is believed to be in China.

## **2016**

The De Sole trial is scheduled to begin on 25 January. Four other lawsuits filed against Knoedler are at the pre-trial proceeding stage in Manhattan federal court. Rosales is awaiting sentencing.